



COPY

Judicial Watch

Because no one is above the law!

November 18, 2001

VIA CERTIFIED MAIL AND FAX

Federal Aviation Administration
Valerie G. Collins
FOIA Program Director, ARC-40
800 Independence Avenue, S.W.
Washington, D.C. 20591

Department of Transportation
Patricia Riep-Dice
Chief, FOIA Division (C-12/5432)
400 7th Street, S.W.
Washington, D.C. 20590

Re: Freedom of Information Act Request

Dear Sir/Madam:

Pursuant to the Freedom of Information Act (hereinafter, "FOIA"), 5 U.S.C. 552, and its regulations, we hereby request from the Department of Transportation (DOT) and the Federal Aviation Administration (FAA) all correspondence, memoranda, documents, reports, records, statements, audits, lists of names, applications, diskettes, letters, expense logs and receipts, calendar or diary logs, facsimile logs, telephone records, call sheets, tape recordings, video recordings, notes, examinations, opinions, folders, files, books, manuals, pamphlets, forms, drawings, charts, photographs, electronic mail, and other documents and things, that refer or relate to the following in any way:

- 1) All communication between former FAA Deputy Administrator Linda Daschle and the New York technology company L-3 Communications.
- 2) All communication between former FAA Deputy Administrator Linda Daschle and the California-based technology company InVision Technologies Inc.
- 3) A communication concerning a meeting between former FAA Deputy Administrator

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Linda Daschle and Mary Schiavo, a former Department of Transportation inspector general, regarding criminal-record checks for all airline employees, cited in *The Miami Herald*.¹

- 4) All information on the number of "eXaminer" airline luggage bomb-detection devices, manufactured by L-3 Communications, currently in use at airports in the United States.
- 5) All information on the number of "CTX" airline luggage bomb-detection devices, manufactured by InVision Technologies Inc., currently in use at airports in the United States.
- 6) All communication concerning the reported breakdowns of "eXaminer" bomb-detection devices at the Dallas/Fort Worth Airport after installation in the spring of 2000.
- 7) All information and communication regarding the number of breakdowns the "eXaminer" bomb-detection devices experience.
- 8) All information and communication regarding the number of breakdowns the "CTX" bomb-detection devices experience.
- 9) All communication on the FAA certification of L-3 Communications "eXaminer" as an FAA approved bomb-scanner.
- 10) All communication regarding the decision to mandate the purchase of an "eXaminer" bomb-scanner for every "CTX" bomb-scanner purchased by the FAA.

Thank you for your expected cooperation in responding to our request in a timely manner, which should be within 10 working days, as required under 49 CFR § 7.31 (c)(3) and 5 U.S.C. § 552 (a)(6)(E)(ii)(I), because time is of the essence. The American people are now at war, on two fronts -

¹ See Joseph Tanfani and Jay Weaver. "Nation's Airport Security Remains at Risk," *The Miami Herald*, October 21, 2001. p. 1A.

- both at home and abroad. The American people deserve full and complete disclosure of the matters requested herein, and to know the nature of the decisions being made in their name. The magnitude of the events of September, 11, 2001, reflects the importance and urgency of this request, made in the public interest for the knowledge and benefit of the American public-at-large. Judicial Watch, through a variety of means and media detailed below and consistent with its legal and public education mission will rapidly and efficiently disseminate the information obtained under FOIA to the American people. In order to accomplish these aims, it is critical that the American people have this request answered in a timely manner.

Pursuant to the FOIA, if any portions of the requested documents are claimed to be privileged, those portions which are not claimed to be privileged should be provided to the undersigned. This should be done prior to the conclusion of the statutory 20-day period for response. In addition, under the FOIA there is an absolute requirement to produce those segregable portions of documents which are not claimed to be privileged, as well as a list ("Vaughn Index") that indicates by date, author, general subject matter, and claims of privilege(s) those documents, or portions thereof, which have been withheld or not provided. Vaughn v. Rosen, 484 F.2d 820 (D.C. Cir 1973), cert. denied, 415 U.S. 977 (1974); Iglesias v. Central Intelligence Agency, 525 F. Supp. 547 (D.C. 1981); see generally LaRocca v. State Farm Mut. Auto. Ins. Co., 47 F.R.D. 278 (W.D. Pa. 1985).

We note that President Clinton instructed agencies in October, 1993, to ensure compliance with both the spirit as well as the letter of the Act. *See* President Clinton's FOIA Memorandum, U.S. Department of Justice, FOIA Update, Summer/Fall 1993, at 3. In addition, Attorney General Ashcroft issued a FOIA Memorandum on October, 12, 1993, which *inter alia* states "the Department of Justice and this Administration are committed to full compliance with the Freedom of Information Act... It is only through a well-informed citizenry that the leaders of our nation remain accountable to the governed and the American people can be assured that neither fraud nor government waste is concealed." and orders "a presumption of disclosure." *See* Attorney General Ashcroft's FOIA Memorandum, U.S. Department of Justice, FOIA Update, Fall 2000, at p. 1.

Judicial Watch is entitled to a public interest fee waiver for this request. At 5 U.S.C. § 552 (a) (4) (A) (iii), the FOIA sets forth a two prong test to determine whether a fee waiver is appropriate. First, the disclosure must be in the public interest by contributing significantly to the public's understanding of the operations of the government. *Schrecker v. Department of Justice*, 970

F. Supp. 49, 50 (D.D.C. 1997); *Fitzgibbon v. Agency for International Development*, 724 F. Supp. 1048, 1050 (D.D.C. 1989); *Larson v. Central Intelligence Agency*, 843 F.2d 1481, 1483 (D.C. Cir. 1988). Second, the disclosure must not be primarily in the commercial interest of the requester. *Schrecker*, 970 F. Supp. at 50; *Fitzgibbon*, 724 F.2d at 1050; *Larson*, 843 F.2d at 483.

Judicial Watch is a 501 (c) (3) not-for-profit public interest organization. One of its purposes is to provide the public with information which exposes government activities that are contrary to the law. Judicial Watch is, in effect, an educational foundation, as well as a law firm, which uses several mechanisms for the dissemination of the information it acquires, and operates to ensure that this information will be made available to the public on a daily basis:

- Judicial Watch, as a press entity itself², produces several press releases each week.

- The *Judicial Watch Newsletter* has a monthly circulation of over 300,000 copies nationwide.

- Judicial Watch maintains a website on which people can view copies of, among other things, FOIA documents, press releases, responsive documents, deposition transcripts and court opinions. This website is viewed by over 20,000 people per day on average, and on a few occasions, had logged up to 1,000,000 visitors in a single day.

- Over 60,000 people subscribe to our "Infonet" listserv for daily updates on our lawsuits, FOIA requests, investigations and public education programs.

- Judicial Watch's Chairman has been invited to testify before Congressional committees as an expert witness on legal matters, including, but not limited to the Privacy Act and the Freedom of Information Act.

- Judicial Watch's Chairman and other employees frequently appear on nationally broadcast radio and television programs to provide information, analysis and

² See Memorandum and Order, *Judicial Watch, Inc. v. U.S. Department of Justice*, Civil Action No. 00-1396 (JR), November 16, 2000.

commentary concerning government corruption and other legal issues.

Judicial Watch has been credited by Courts, the Congress and various other media outlets on several occasions for uncovering information and documents concerning government corruption, illegal and/or inappropriate activities, and documented instances of government attempts to "stonewall" requests for information and accountability in the public interest.

Judicial Watch is involved in the production and broadcast of a monthly one hour news and information television program, *Public Disclosure*, fashioned after the long running news broadcast *60 Minutes*. *Public Disclosure* is syndicated across the country.

Judicial Watch produces its own twice-weekly television show and weekly radio program, both entitled *The Judicial Watch Report*, which air nationwide through syndication on cable television and radio stations, as well as the Internet. Judicial Watch disseminates information it obtains through these mediums as well.

Judicial Watch hosts and sponsors conferences and rallies as public education forums for the dissemination of the information it acquires. For example, Judicial Watch hosted an Ethics in Government 2000 Conference at the Washington Hilton on October 20-21 2000 and an Ethics in Government 2001 International Conference, "Fighting Corruption, Fostering Freedom," on October 5-6, 2001 in Miami, Florida.

On October 29, 2001 Judicial Watch launched a daily, national, radio program with USA Radio Network, hosted by broadcast veterans Russ Verney and Jane Chastain. The goal is to give the public an update on our day-to-day efforts and goals, and to get information in the hands of the American people.

In short, Judicial Watch's efforts to expose government corruption make news on almost a daily basis, and it functions, in part, as a member of the media.

Indeed, there is an unequivocal public interest served by revealing the aforementioned documents. The American people should be made aware of, among other things, reports, investigations, decisions, waivers and findings of fact concerning the current state of security at American airports. With the events of 9-11 it has become painfully clear that present security measures at airports did nothing to prevent a conspiracy to hijack four commercial airliners, to be used in the deadliest attack of terrorism on US soil. The American people deserve full disclosure of steps that have been taken by their government to enhance the security of their travel at airports and on flights. The issue at hand is a current national news story and for all Americans who travel in the air. The future actions or inactions of the government could cost further lives. This information is not merely intended to satisfy the curiosity of a few. To be sure, the public is always well served when it knows how government activities, particularly matters touching on legal and ethical questions, have been conducted. This request is based, in part, on a news articles. See Jim Morris. "FAA Stands by Bomb-Detection Device that some say are Unreliable," *The Dallas Morning News*, October 23, 2001; Joseph Tanfani and Jay Weaver. "Nation's Airport Security Remains at Risk," *The Miami Herald*, October 21, 2001,p. 1A. A copies of which is enclosed with this request.³

Thus, we are convinced that the information requested will be meaningfully informative in increasing public understanding of airport and flight security. Hence, we submit this request.

Clearly, information that exposes government activity that is contrary to the rule of law will contribute significantly to the public's understanding of the operations and activities of government.

³ Jim Morris. "FAA Stands by Bomb-Detection Device that some say are Unreliable," *The Dallas Morning News*, October 23, 2001; Joseph Tanfani and Jay Weaver. "Nation's Airport Security Remains at Risk," *The Miami Herald*, October 21, 2001,p. 1A.

In fact, according to the *Office of Management and Budget, Freedom of Information Reform Act of 1986 – Uniform Freedom of Information Act Fee Schedule Guidelines*, § 67(g), this is one of the categories of activity which courts have characterized as in the public interest.

Congress has spoken clearly on this subject by amending FOIA so that it can “be liberally construed in favor of waivers for noncommercial requesters.” *McClellan Ecological Seepage Situation*, at 1284 (quoting 132 Cong. Rec. S14298 (Sept.30, 1986)). The main purpose of the amendment, according to Senator Leahy, was to prevent gamesmanship on the part of government agencies i.e., to “remove roadblocks and technicalities which have been used by various Federal agencies to deny waivers or reductions of fees under FOIA.” *Id.* (quoting 132 Cong. Rec. S16496, October 15, 1986).

We request expeditious handling and immediate release of the requested information in the public interest.

In accordance with 49 CFR § 7.31 (c)(3) and 5 U.S.C. § 552 (a)(6)(E)(ii)(I) we submit this request be granted and expedited because the information is urgently needed for dissemination so that the public may be informed about the actual or alleged actions of agencies of the Federal Government.

In addition, we find a compelling need for the requested information given that a significant part of our operation involves disseminating information as a legitimate news source. Thus, we assert that the request concerns matters of widespread and exceptional media interests in which there exist possible questions about the government’s integrity (to include senior government officials) which effect public confidence.


Judicial Watch certifies that under the provisions outlined in 49 CFR § 7.31 (c)(1)(ii) and 5 U.S.C. § 552 (a)(6)(E)(ii)(I), we have a compelling need for information sought herein.

Release of the information will promote confidence in our Constitutional Republic, and contribute to furthering the integrity of the American national government by deterring and/or

sanctioning corrupt activities. The failure to do so will likely result in the further compromise of important interests of the American people.

Sincerely,

JUDICIAL WATCH, INC.



Christopher J. Farrell

CJF/mac

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The Dallas Morning News

October 23, 2001, Tuesday

SECTION: WASHINGTON DATELINE

KR-ACC-NO: K3109

LENGTH: 1160 words

HEADLINE: FAA stands by bomb-detection devices that some say are unreliable, underused

BYLINE: By Jim Morris

BODY:

WASHINGTON _ The Federal Aviation Administration is preoccupied with anti-hijacking measures, for obvious reasons.

But lost in discussions about stronger cockpit doors and more air marshals is this fact: Before four airplanes were commandeered on Sept. 11, the weapon of choice among terrorists had been explosives planted in unaccompanied luggage.

Aviation security experts say there is no reason to believe that bombs have fallen out of favor with criminals. Yet, government officials say, one type of explosive-detection machine found in U.S. airports, the eXaminer, is unreliable and the other, the CTX, is underused.

Only two eXaminers are being used in U.S. airports and nine are in a warehouse awaiting delivery. There are 140 CTXs at airports around the country. For security reasons, the FAA won't say which ones have the scanners.

The eXaminer at the Dallas/Fort Worth Airport broke down repeatedly after it was installed in the spring of 2000, according to Congressional testimony this month from Kenneth Mead, the Transportation Department's inspector general.

Airline officials could not be reached to determine how well the eXaminer is performing now.

"They work, but barely," said a former FAA security official, who spoke on condition of anonymity. "The carriers are not happy to have them because they break down a lot."

In a statement issued on behalf of the eXaminer's manufacturer, L-3 Communications of New York, a company spokesman said that the product has had "growing pains" but "is presently operating without issue."

FAA spokesman Paul Takemoto agreed, saying, "They are operating up to standards."

A senior congressional staff member, who asked not to be identified, said that the CTalso was fickle when it was first used. The eXaminer, he said, "is getting more reliable as it's being used more."

The push to identify explosives in checked baggage began in earnest after the December 1988 bombing of Pan Am Flight 103 over Lockerbie, Scotland. A California firm, InVision Technologies, started work on a screening device similar to one used in medical CAT scans in 1990. Four years later, InVision's CTwas certified by the FAA and began appearing in airports.

After TWA Flight 800 exploded off Long Island in July 1996 in what was initially thought to be a terrorist act, Congress provided more money for CTXs. Since 1997, it has given the FAA about \$455 million to purchase the machines, Mead told Congress. The machines cost \$700,000 to \$1.5 million apiece depending on the model.

On several occasions in the late 1990s, Mead and the U.S. General Accounting Office warned that many CTXs were being used to scan only a fraction of the bags for which they were designed. As recently as July, more than a third of the machines were scanning only 225 bags per day, though they are capable of screening 225 bags per hour, Mead said.

Industry officials say that there have been two main barriers to installing and fully using the machines. The first is their size; the newest version of the CTX, for example, measures nearly 16 feet by 8 feet.

"We found it wasn't quite as easy as everybody thought it would be to sort of stick one in (an airport) lobby," said Bonnie Wilson, a vice president with Airports Council International-North America, a trade association. "Some of the delays came about because existing structures had to be redesigned."

The second barrier has proved more formidable. Airlines use an FAA-approved passenger profiling system the nuances of which are secret along with random selection to determine which checked bags are scanned for explosives.

Not long after the CTbuildup began, Wilson said, it became apparent that the FAA had overestimated the number of "selectees" whose baggage would be inspected. She said the airlines couldn't hit the screening numbers desired by the FAA just by using the profiling criteria.

"That left the airlines in kind of a precarious position," Wilson said.

As a result, the FAA took steps to generate more random selection.

Until recently, the agency said that it did not expect airlines to be able to screen all checked bags until 2009. FAA Administrator Jane Garvey said last week that the timetable would be accelerated but would not provide specifics.

Now in its third generation, the CTwas the only certified bomb-scanner until L-3 received FAA approval for the eXaminer in November 1998.

"We bent the rules to allow (L-3) to keep testing," the former agency official said. "They barely passed, and there were still operational problems."

The eXaminer had powerful advocates, included Rep. Bill Young, a Florida Republican who chairs the House Appropriations Committee, and Linda Daschle, an aviation lobbyist and wife of Senate Majority Leader Tom Daschle, D-S.D. Neither Young nor Daschle was available for comment.

But the congressional staffer said the FAA had been favoring InVision, at L-3's expense. Last year, the Appropriations Committee directed the agency to buy one eXaminer for every CTit acquired. The committee "wanted there to be a level playing field to get the benefits of competition," the staffer said.

Takemoto, the FAA spokesman, said, "We have extremely high standards for these machines, which in part is why only two companies currently produce them."

In the wake of the Sept. 11 attacks, Takemoto said, more of the scanners will be put in use as soon as they can be manufactured and delivered.

Some wonder whether that will be soon enough.

"Right now, you've got those machines deployed and working in fewer than 30 percent of all airports," said Larry Johnson, a Washington security consultant and former deputy director of the State Department's Office of Counterterrorism. "Are they (terrorists) likely to get a bomb on board a plane? Probably not. But even one bomb is too many."

On Dec. 21, 1988, a bomb took 259 lives on Pan Am Flight 103 and another 11 on the ground in Scotland; a Libyan intelligence agent was convicted of the crime last winter.

On June 23, 1985, a bomb thought to have been planted by Sikh extremists exploded aboard Air India Flight 182, en route from Toronto to Bombay. Three hundred twenty-nine people died off the Irish coast.

In 1995, a Philippines-based plot to bomb 11 U.S. jetliners over the Pacific was foiled at the last minute.

In Johnson's view, passenger profiling as a substitute for scanning all bags is "useless."

"You develop a profile of what you think a terrorist looks like, but what if you're wrong?" he said.

Funding for more explosive-detection equipment _ as well as initiatives to match all checked bags to passengers and to perform background checks on all workers with access to secure airport areas _ should be dramatically increased, he said.

The current system, Johnson said, is "an absolute gamble."

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The Miami Herald

October 21, 2001 Sunday FINAL EDITION

SECTION: FRONT; Pg. 1A

LENGTH: 2168 words

HEADLINE: NATION'S AIRPORT SECURITY REMAINS AT RISK

BYLINE: JOSEPH TANFANI AND JAY WEAVER, jtanfani@herald.com

BODY:

Despite years of warnings about the threat of terrorism, supposedly secure areas of the nation's airports remain vulnerable to criminals and illegal migrants who can easily skirt a screening net to gain access to loading ramps, baggage conveyors, even the bellies of aircraft.

The system of employee background checks designed to keep dangerous people away from planes and cargo has repeatedly failed because of lax regulations, negligent employers and weak enforcement by government watchdogs, a Herald review shows.

In the aftermath of the Sept. 11 terrorist attacks, airports around the country have set up more careful screenings at passenger checkpoints and placed National Guard patrols inside terminals. But the recent history of Miami International Airport has shown that the nation's airports are just as vulnerable to security breaches from within.

Nationwide, as many as one million airport workers have badges that allow them to walk around passenger checkpoints, get through doors leading to loading ramps, and even climb aboard airplanes. Yet a review of criminal cases and audits shows that it's not rare for workers at MIA and elsewhere to get a security badge after a slapdash background check - or none at all.

"The checks are bogus. It's ridiculous," said lawyer Alex Solomiany. His client, a former airline ticket clerk, and 11 other airport employees were arrested last month on charges of using phony documents to work at MIA.

Prosecutors said the employees were able to submit fake Social Security numbers and green cards and were handed MIA badges allowing them to enter secure areas in the airport - no questions asked. Most weren't caught for months.

In the past week, the head of the Federal Aviation Administration ordered criminal background checks of all airport employees who have security clearances - a measure first proposed 11 years ago. Congress also is debating whether to create a new federal agency to handle checkpoint screening.

But government auditors and security experts say that's still not enough. They say airports and regulators have been negligent in not demanding more thorough checks of airport employees through credit checks, drug tests, residency status, employment histories, even polygraphs.

"Our system is so out of control, there is not much chance you will get it under control," said Tom Cash, former Miami chief of the Drug Enforcement Administration in the mid-1990s and now a security expert with Miami-based Kroll & Associates, a firm that does hundreds of thousands of such background checks.

Critics lay much of the blame on years of lobbying by airlines against tougher rules on background checks and weak oversight by airports and the Federal Aviation Administration.

A Herald computer analysis of FAA data shows that the agency issued fines in fewer than 7 percent of the cases of backgrounding violations nationally in the last 10 years. Most of the violators got away with written warnings or reprimands, and in 14 percent of the cases, the FAA took no action at all.

Miami ranks fifth in the nation for violations involving breaches of secure areas, though just 25 percent of the cases here resulted in fines. Nationally, the agency issued fines in 30 percent of those breaches.

Kathleen Bergen, a spokeswoman for the FAA in Atlanta, declined to comment on the figures, but said the agency has been "aggressive" in enforcing security rules.

"When we find a problem, we make sure it's fixed immediately," she said.

PROBLEMS SEEN AT MIA

Arrests of ramp workers

raised security issue in 1999

Security problems at MIA started to get national attention in 1999, when federal prosecutors made the first in a string of 74 arrests involving ramp workers. Most were arrested for using their security access badges to sneak inside planes and smuggle drugs.

In one such case, an American Airlines worker in Miami took a \$7,000 bribe from federal undercover officers, went on a Philadelphia-bound plane and planted a package containing what he thought were a Glock pistol, two loaded magazines and three M-67 hand grenades.

Just last year, Aviation Safeguards, a private firm that provides checkpoint screeners, pleaded guilty to federal charges here that it failed to do adequate background checks on 70 MIA employees - including two with criminal records - and paid \$110,000 in penalties.

Even now, federal law-enforcement officials say they are investigating other apparent violations at MIA involving security badges and failed background checks. They declined to elaborate.

"There are loopholes in the system that need to be closed down," acknowledged Nelson Oramas, MIA security chief.

The Miami airport has spent millions of dollars in the last two years to tighten security, installing surveillance cameras, sealing off doors, adding new picture ID's. But Oramas says the airport has no authority to order better background checks - that's up to the FAA.

"We have to figure out who is working there," said Wayne Black, a Fort Lauderdale aviation security consultant. "The risk isn't so much from passengers. Who else has access to the aircraft?"

INSIDE HELP SUSPECTED

Were airline employees

involved in terrorist plot?

The question took on chilling dimensions after the terrorist attacks. Box-cutter knives similar to those used by the hijackers were found on several other flights grounded that day, leading investigators to suspect that the plot may have been aided by airline employees.

Two former employees of an airline-catering company were arrested in Detroit with phony immigration documents. Investigators found their security-access badges, and a day planner with notes pointing to a planned attack on an American military base in Turkey.

MIA, like other airports, issues the badges that allow employees to screen passengers and enter restricted areas, including aircraft loading ramps. But the main responsibility for doing the background checks rests with employers: the airlines, cargo companies and others.

Last year, an audit by the inspector general of the U.S. Department of Transportation found that system crippled by a series of flaws:

- * In a random check of employee records at six airports, the DOT found no evidence that any background checks were done in 19 percent of the cases. In another 16 percent, the agency couldn't tell whether the checks were done correctly or not. The airports weren't identified.

- * The FAA itself, in separate reports for three years in a row, found that some employers at major airports were failing to do background investigations. But the FAA failed to do much about it, the inspector general found: "The deficiencies persisted because FAA did not ensure corrective actions were taken."

Bergen, the FAA spokeswoman, disputed that, saying the FAA has been "very aggressive" in requiring airports to yank access privileges from employees with problems.

- * Nine percent of all security badges were in the hands of people who no longer needed them, including many people who no longer worked at the airports.

"At any given time at any airport, there are hundreds of missing ramp passes," Black said.

And federal regulators and prosecutors have repeatedly found that Miami and other airports were easily breached even without a security badge.

In a 1999 examination of Miami and seven other airports not identified, federal transportation inspectors simply walked out of terminal back doors, climbed on planes and sat down without anyone stopping them.

In another, federal agents slipped around passenger checkpoints using bogus law-enforcement badges with "credentials" downloaded from the Internet.

Background-check problems are not limited to a few companies or airports.

Last week, federal prosecutors in Philadelphia filed a motion charging that Argenbright Security, a company that staffs passenger checkpoints for dozens of airports nationwide, including MIA, was still hiring convicted criminals and failing to do background checks - even after pleading guilty to the same charges and paying more than \$1.5 million in fines more than a year ago.

The FAA and the Office of the Inspector General found continuing Argenbright violations at 14 airports: Philadelphia, Boston Logan, Washington Dulles, Detroit Metro Wayne County, McCarran in Las Vegas, Trenton-Mercer in New Jersey, Eastern Iowa Airport, Seattle-Tacoma, New York LaGuardia, Dallas/Fort Worth,

Port Columbus in Ohio, Nashville, Phoenix Sky Harbor International and Los Angeles International.

The violations included screeners working when they had criminal convictions. One in Seattle had a prior conviction as a felon in possession of a handgun.

And in Miami, where Argenbright handles six of the nine MIA security checkpoints, the company's own audits found more failings. For Argenbright's American Airlines operation, an audit this year concluded that none of the files reviewed included a required criminal background check and 60 percent of people had no high-school diploma, according to court records.

American did not respond to phone calls.

NO BACKGROUND CHECK

Some employees of United
at MIA not investigated

In a February audit of its United Airlines workers at Miami, 43 percent of the files did not have the required criminal background check.

A United spokesman declined to comment on the audit, saying only that the airline is "in full compliance with FAA security directives."

Argenbright did not return phone calls.

Calls for tougher checks and tighter controls started more than a decade ago. After the 1988 bombing of Pam Am Flight 103 over Scotland, an aviation safety panel recommended criminal-record checks for all employees.

But airlines opposed it. At the time, before computerized fingerprinting, they argued that the checks would cost too much and take too long, up to 90 days. They hired high-powered help to kill the checks, including former FBI and CIA Director William Webster.

Webster argued that background checks wouldn't really be an effective check on terrorism.

"I credit him with getting it watered down," said U.S. Rep. James L. Oberstar, D-Minn., who proposed mandatory criminal checks in 1990.

The FAA went along, too.

"In the past, their position was in lockstep with the airlines - 'It cost too much to do this,' " said Mary Schiavo, a former Department of Transportation inspector general.

Schiavo said she remembers a meeting with Linda Daschle, a former FAA deputy administrator, now an airline industry lobbyist: "She sat right there at the meeting and argued against background checks - and the reason was the airlines were objecting."

Daschle, the wife of Senate Majority Leader Tom Daschle, said the FAA was trying to balance the need for checks with the fear of causing "undue delay" for airlines.

"I wore only one hat, and that was to . . . ensure the traveling public's safety," she said.

Bergen of the FAA blamed airlines and allies in Congress for thwarting the rule.

Five years after the aviation safety panel's report, the FAA issued its compromise. It required a criminal check only when an employee's background included a "trigger," such as a 12-month gap in employment.

Those "triggers" often didn't work, the Department of Transportation audit concluded. Most felony convictions, even for violent crimes, carried less than a 12-month sentence.

LAW IS GIVE AND TAKE

Background check required,
but not a look at job history

A reform law finally was passed last year, requiring a fingerprint-based criminal background check for all new employees who work checkpoints or have access to secure areas.

But while it added a rule requiring a criminal check, it took away the requirement to check job histories.

That allowed the 12 MIA employees arrested on Sept. 14 to slip through the cracks. Because they were illegal migrants from South America, they had no criminal histories in the United States, according to prosecutors.

Bergen said the new law is an improvement but not perfect. "We are checking to see whether foreign criminal, credit or drug tests should be required for employees at airports," she said.

But Richard Doubrava, air security director for the Air Transport Association, a Washington-based airlines lobbying group, points out that none of the accused "ramp rats" smugglers in Miami had criminal records before they went to work at the airport.

"There has been no empirical evidence that anyone convicted of a crime is any worse of an employee, or is any more likely to engage in criminal activity in the future," he said.

However, Department of Transportation auditors found that nine of 53 workers arrested in the "ramp rats" sting committed crimes after being hired.

"Criminal checks must be recurring to ensure the continued trustworthiness of employees," the audit said.

Herald staff writer Larry Lebowitz and computer-assisted reporting editor Jason Grotto contributed to this report.

NOTES: STRIKE AGAINST TERRORISM

GRAPHIC: photo: U.S. marshalls patrol airport (a), Patrick Michel scans worker (n), workers service airliner at MIA (a)

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Sender: Christopher J. Farrell

Re: Freedom of Information Act
Request

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